IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 183 OF 2005

BNP Paribas ..Applicant

Vs.

Mr. Koushik Chakrabarti ..Respondent

Mr. C.S. Balsara with Mihir Mody, Raju Gawde i/b M/s.K. Ashar & Co. for applicant.

Mr. Ajit Makhijani with Vivek Sharma i/b M.M. Legal Associates for respondent.

CORAM : B. H. MARLAPALLE,J.

Date : February 24, 2006.

P.C.:

1. Heard the learned counsel for the applicant.

Perused the affidavit in reply filed by the respondent.

2. The respondent was in the employment of the applicant-bank and the bank claims that personal loan of Rs.4 lacs was sanctioned by it to the respondent vide an agreement dated 3/9/2001 with interest at 14% per annum and repayable in 48 equal monthly instalments of Rs.10,932/- per month. As per the bank the said loan amount has not been repaid in its entirety and, therefore, for the recovery of the balance amount it has invoked clause 18 of the said agreement for appointment of Arbitration Tribunal vide its letter dated 15/5/2005. Along with application

copies of some letters exchanged between the parties have also been placed on record and it appears that the respondent had agreed for the appointment of Mr. C.M. Jha as the sole Arbitrator and it was not in favour of an Arbitral Tribunal in view of the costs involved. The applicant-bank by its letter dated 4/5/2005 has informed the respondent regarding the recovery of principal amount of Rs.3,40,928.34- with interest of Rs.1,39,212.40, thus making a total of Rs.4,80,140.74 as on 1/5/2005.

3. The respondent has filed affidavit in reply and has opposed this application. There is no dispute that the respondent was removed from service as per the communication dated 26/2/2002 and while terminating the contract of employment a provisional statement of benefits and dues was enclosed to the said letter of termination. In the said statement a gross amount of Rs.7,41,995/- was shown to be payable to the respondent by the applicant on termination of the contract of employment, whereas loans and dues recoverable were shown as under:-

BNPP Employee Loans	- Nil
BNPP Retail Loans	
(a) Auto Loan	- Rs.2,29,150/-
(b) Personal Loan	- Nil

4. The respondent employee, therefore, communicated the bank vide his letter that in terms of the termination letter dated 26/2/2002 and the statement of benefits and dues the bank had waived the recovery of the subject balance loan amount. The applicant contends that it was a mistake and more so a clerical mistake while preparing the said provisional statement. Whether it was a clerical mistake or not is a matter of fact to be proved before the competent court by leading documentary and oral evidence and it cannot be proved by documentary evidence alone. In these obtaining circumstances this application cannot be entertained under Section 11 of the Act.

5. Hence, the application is hereby rejected.

(B.H. Marlapalle, J.)